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April 24, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N. W., Room 222
Washington, D. C. 20554

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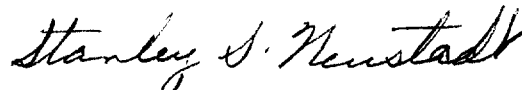
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: MM Docket No. 95-31

Dear Mr. Caton

Transmitted herewith on behalf of the Ohio Educational Broadcasting Network Commission are an original and four copies of its Comments in the above-referenced proceeding. Copies are also being sent, as ordered in the Notice of Proposed Rulemaking, to the Chief, Mass Media Bureau and to the Transcription Service.

Very truly yours



Stanley S. Neustadt
Counsel for OEBNC

Enclosure

cc: Chief, Mass Media Bureau (w/encl)
Transcription Service (w/encl)

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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE

Federal Communications Commission

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In the Matter of

**Reexamination of the Comparative
Standards for New Noncommercial
Educational Applicants**

MM Docket No. 95-31

To: The Commission

COMMENTS OF OHIO EDUCATIONAL BROADCASTING NETWORK COMMISSION

The Ohio Educational Broadcasting Network Commission ("OEBNC"), by its attorneys, submits these Comments in response to the Notice Of Proposed Rulemaking released in the above-captioned proceeding on March 17, 1995. OEBNC respectfully urges that the standards for comparison of applicants for new noncommercial facilities give special weight to proposals which seek to effectuate a comprehensive, carefully designed State plan for providing noncommercial educational service to as many of the residents of the State as possible, whether the authorization is to be state-owned or licensed to another entity, under state auspices. This position, which will be elaborated below, does not conflict with the position taken herein by national educational broadcasting organizations, but adds a new factor which will accomplish the most important objectives sought by those organizations in the most efficient manner, while maintaining the most desirable

relationship between the States and the Commission. In support of its position, OEBNC states:

1. OEBNC is an independent agency of the Government of Ohio, created by Act of the General Assembly of the State of Ohio. It is authorized to own and operate, or contract to provide, transmission and interconnection facilities for state-wide educational television and radio networks, and to provide educational programs for distribution throughout the networks. Among its basic responsibilities is the planning of the expansion of educational broadcasting in the State of Ohio. A short description and history of the activities of OEBNC will help to explain and support the position it urges in this proceeding.

2. In 1959, the Ohio General Assembly created the Ohio Interim Educational Television Study Commission. Among its functions, the Commission was to conduct engineering and other studies to determine the feasibility of, and costs and other requirements for, establishing and providing state-wide educational television network services through which educational television programs and station facilities then in use, or which might be obtained, would be made available to every citizen in Ohio, in and out of school. Its findings, reported to the General Assembly in February 1961, recommended the creation of a state-wide television network. It also detailed numerous uses and benefits for the population of the State of Ohio that would flow from such action. The first specification set forth by the Commission was that broadcast and interconnection facilities for the general and specialized needs of the Ohio educational establishment on all levels should be provided on a state-wide basis.

3. OEBNC (then OETNC) was created by the Ohio General Assembly as the result of a recommendation by the Interim Commission that a permanent state agency be created to establish state-wide educational television. OEBNC then applied for and was granted authorizations for five noncommercial television stations. Subsequently, **in accordance with its original plan, OEBNC assigned those stations to institutions with more direct ties to areas within Ohio that the stations serve.** It also applied for and received authorizations for the facilities utilized in a highly sophisticated interconnection system, by means of which all noncommercial educational television stations within the state have access to programs provided by OEBNC, by national organizations, and by any individual station which is part of the network.

4. For purposes of these Comments, it is not necessary to set forth in detail the subsequent history of the obligations and operation of OEBNC. However, it is important to recognize that in 1980 the Ohio Legislature extended the jurisdiction of OEBNC to include noncommercial educational radio, as well as noncommercial educational television. Its functions with respect to radio are in all respects the same as those for television. Indeed, OEBNC commissioned a study which led to the adoption of a report (the Vernier report) for seeking the additional noncommercial educational FM authorizations essential for reaching as many as possible of the citizens of Ohio with useable noncommercial educational radio service, which specifies sites, powers, and frequencies of facilities to accomplish this purpose. Several applications which propose those facilities are now pending before the Federal Communications Commission, all of which have been filed by other licensees in accordance with the OEBNC plan.

5. By virtue of its statutory obligations, OEBNC is not only concerned with the development of noncommercial educational broadcast stations in Ohio, but also with the funding of their operations. All noncommercial ETV stations in Ohio which provide instructional programming for in-school use receive funds for the transmission and purchase of such programs directly from the Ohio Department of Education biennial appropriation. OEBNC advises the Department of Education concerning the dispensation of such funds. OEBNC from its own biennial budget makes subsidy grants to the nine state-assisted, university-owned ETV stations, as well as to the three ETV stations in Ohio which are not licensed to state-assisted universities, for their weekend and evening programming.

6. OEBNC performs other functions in effectuating the plans of the Government of the State of Ohio with respect to communications and education matters, some of which have been brought to the attention of the Commission in other rulemaking proceedings. It has here emphasized the careful state planning and nurturing of educational broadcasting because it wishes to address a matter which neither the NPRM or the commenters seem to have expressly considered. OEBNC is inclined to agree with the APTS/NPR comments that "state-owned" applicants or licensees need not be treated differently from other applicants, merely because they are state-owned. Or, stated otherwise, that the specific criteria on which a comparison should be based would apply equally to state-owned applicants in determining whether a grant of their applications would serve the public interest. It is not the fact that a licensee or applicant is owned by the state which should affect the balance in comparing applicants. OEBNC strongly urges

that any application which effectuates or conforms to a comprehensive state-wide plan, whether the applicant is owned by the state or not, should receive a strong preference in any comparison.

7. It would be wise for the Commission to accept and act on the fact that the state government, which is responsive to the people of the state, is in the best position to determine not only the educational and broadcasting needs of the state, but also the best manner for responding to them, so long as a comprehensive state plan does not conflict with Federal policy or rules. One reason for Federal regulation of broadcasting (and other communications) is that what happens in one part of the country almost surely affects, directly or indirectly, operations in other parts of the country. The same is true within many states which have state-wide education plans. The decision on how best to implement such a state-wide plan cannot be made as responsibly by an individual group or entity within the state which tries to further its own, more parochial interests.

8. This is not a novel concept for the Commission. Section 73.502 of the Rules expressly provides that in considering the assignment of channels the Commission will take into consideration the extent to which each application meets the requirements of a state-wide plan for non-commercial educational FM facilities. OEBNC urges that such considerations go beyond the allocation of facilities to include all qualifications. In this way, the objectives of the APTS/NPR position, which, in turn effectuate the policies of the F. C.C., could most effectively be attained in any situation which involves such an application.

9. The objective of integrating a proposed service into educational and cultural objectives of an applicant is satisfied by definition in the furtherance of any comprehensive state plan; this includes all of the matters discussed by APTS/NPR at pages 18-20 of their Joint Comments herein. They state, inter alia, that as a general matter, it would not be appropriate for the F. C. C. to decide which objectives are most meritorious. However, that is a matter that can well be left to the State. Similarly, effectuation of the overall proposal (pages 21-22) is most clearly assured, including outreach and other factors, by the state-wide action of the state government, as in Ohio. The same is true of all of the other elements of the APTS/NPR affirmative proposals, including broad representation, optimum coverage, fullest use of available technologies, and operational efficiencies.

10. In all other respects OEBNC supports the views submitted by APTS/NPR. It does respectfully urge, however, that the preference proposed in these Comments will help the Commission not only to decide some contested cases much more efficiently, but will encourage states to develop plans which will in the long run greatly advance the public interest.

Respectfully submitted
OHIO EDUCATIONAL BROADCASTING
NETWORK COMMISSION

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April 24, 1995